

SECOND APPEAL NO. 29 OF 2003

- 1(a). Miss Lata Shrironga Naik,
d/o late Shrironga Sonum
Naik, major of age, r/o
Fondvem, Ribandar, Ilhas,
Goa,
 - 1(b). Miss Reshma Shrironga Naik,
d/o late Shrironga Sonum Naik,
major of age, r/o Fondvem,
Ribandar, Ilhas, Goa,
 - 1(c). Mr. Bholeswar Shrironga Naik,
s/o late Shrironga Sonum Naik,
major of age, r/o Fondvem,
Ribandar, Ilhas, Goa,
 - 1(d). Miss Yamini Shrironga Sonum
Naik, d/o late Shrironga
Sonum Naik, major of age,
r/o Fondvem, Ribandar,
Ilhas, Goa,
 - 1(e). Miss Daya Shrironga Naik,
d/o late Shrironga Sonum
Naik, major of age, r/o
Fondvem, Ribandar, Ilhas,
Goa,
 - 1(f). Miss Darshan Shrironga
Naik, d/o late Shrironga Sonum
Naik, major of age, r/o Fondvem,
Ribandar, Ilhas, Goa,
 2. Mrs. Shrimati Naik,
widow of Shrironga Sonum
Naik, housewife, aged
about 57 years, r/o Fondvem,
Ribandar, Ilhas, Goa,
 3. Ms. Banumati Kashinath Naik,
widow of Kashinath Sonum
Naik, aged about 62 years,
r/o Fondvem, Ribandar,
Ilhas, Goa.
- ...Appellants.

Versus

1. Mr. Madhu Naik, married,
aged 47 years, driver,
r/o Fondvem, Ribandar,
Ilhas, Goa,

2. Mrs. Rajani Naik,
wife of respondent no.1,
aged about 42 years, r/o
Fondvem, Ribandar, Ilhas,
Goa,
 3. Mr. Sanjay Naik, s/o
Madhu Naik, aged 23 years,
r/o Fondvem, Ribandar, Ilhas,
Goa,
 4. Mr. Shivkumar Madhu Naik,
s/o Madhu Naik, aged 22 years,
r/o Fondvem, Ribandar, Ilhas,
Goa,
 5. Mr. Prakash Madhu Naik,
s/o Madhu Naik, aged 21 years,
r/o Fondvem, Ribandar, Ilhas,
Goa,
 6. Miss Suchita Madhu Naik,
d/o Madhu Naik, aged 18
years, r/o Fondvem, Ribandar,
Ilhas, Goa,
 7. Mrs. Asha Shrikant Naik,
d/o Ramakant Sonum Naik,
wife of Shrikant Naik, r/o
Divar, Ilhas, Goa,
 8. Mr. Shrikant Naik,
married, aged 47 years,
working in PWD, Works
Division II, Tonca, Goa,
and r/o Divar, Ilhas, Goa,
 9. Mrs. Surekha Prakash Naik,
d/o Ramakant Sonum Naik,
wife of Prakash Naik,
aged 57 years, r/o Cudnem,
Sanquelim, Ilhas, Goa,
 10. Mr. Prakash Naik,
married, Government
Servant, r/o Cundnem,
Sanquelim, Goa, and
 11. Mr. Bharat Ramakant
Naik, s/o Ramakant
Sonum Naik, aged about
32 years, r/o Fondvem,
Ribandar, Ilhas, Goa.
- ...Respondents.

Mr. Sudin Usgaokar, advocate for the appellants.

Mr. S. G. Bhobe, advocate for the respondents.

CORAM : F. I. REBELLO, J.

DATE : 4th July, 2003.

ORAL ORDER

The principal contention advanced on behalf of the appellants is that the marriage between Sonu Sada Naik, and his second wife, Goku, was not registered in terms of law required in Goa and in these circumstances not valid and as such are not entitled to inherit the share of the property of the late Sonu. It is contended that it is only the appellants who would be so entitled. It is their case that insofar as they are concerned, they are the off-springs of a marriage which had been duly registered in terms of law required and consequently, it is they alone who are entitled to inherit.

Learned counsel seeks to rely on the provisions of Article 48 and Article 101 of the Portuguese Civil Code as in force. It is also contended that the earlier judgments of this Court on marriages which were not registered can be distinguished as in those cases though the parties were Goans, the marriages were solemnized outside Goa where it could be so done. In the instant case though the marriage itself is disputed, the marriage was solemnized in Goa and, therefore, it will have no legal effect.

It would have been possible to consider those arguments except for the finding recorded by the trial Court in paragraph 19 of the judgment, where the trial Court records

that there was an earlier civil suit filed, being Civil Suit No.62/75/C wherein the present appellants were parties. After considering the birth certificates of defendant no.1 and his brother therein the Court held that the brothers and sisters are legitimate children. That has not been challenged and is therefore conclusive. Once there is a finding recorded in the civil proceedings that the children born out of the second marriage, who are respondents herein or claiming through them were the legitimate children of Sonu, it will not be open for the appellants to once again reagitate the issue on the ground that the marriage was not registered. That question on the facts and circumstances of the case, will not arise. In the light of that no interference is called for.

The Second Appeal is rejected.

F. I. REBELLO, J.

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